

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
(SOUTHERN DIVISION)**

K.B.)	
)	
Plaintiff,)	Case No: 1:19-cv-145
)	
v.)	JURY DEMAND
)	
CITY OF CHATTANOOGA,)	
)	
Defendant.)	

DEFENDANT CITY OF CHATTANOOGA’S MOTION TO DISMISS

Pursuant to Fed. R. Civ. Pro. 12(b) (6), Defendant City of Chattanooga (the “City”), files this Motion to Dismiss the Complaint of K.B. (the “Plaintiff”) for alleged violations of her civil rights pursuant to 42 U.S.C. § 1983 by Desmond Logan (“Logan”). Plaintiff’s Complaint fails to state a claim against the City for which relief can be granted. The Complaint alleges the City is liable for the alleged acts of Logan because it has a custom of inaction in the face of repeated civil rights violations by employees. However, as a matter of law, the allegations referenced in the Complaint are not sufficient to show or to even create an inference of the existence of such a custom of inaction on the part of the City. Therefore, the Complaint against the City should be dismissed with prejudice. The City has filed a Memorandum of Law pursuant to E.D. L.R. 7 in support of this Motion.

CERTIFICATION OF CONSULTATION

Pursuant to this Court’s Order Governing Motions to Dismiss (Doc. 7), I hereby certify that on June 12, 2019, I conferred with counsel for Plaintiff prior to the filing of Defendant’s Motion to Dismiss to determine if the Motion to Dismiss could be avoided.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF CHATTANOOGA, TENNESSEE

By: /s/ Phillip A. Noblett
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading upon Plaintiff's counsel by electronic filing and by depositing same in the United States mail, postage prepaid, and addressed to the following:

David Randolph Smith
David Randolph Smith & Associates
1913 21st Avenue South
Nashville, TN 37212

Chad Phillips
Sutherland & Belk, PLC
2505 21st Avenue South, Suite 400
Nashville, TN 37212

This 14th day of June, 2019.

/s/ Joseph A. Kelly
JOSEPH A. KELLY